

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR Klickitat County

BENJAMIN PETTER; LAUREN PETTER;
ROBERT MERCER; BRENDA MERCER;
CURT NUCCITELLI; BEATRICE
GASPER; ETHNIC CHAMBER OF
COMMERCE COALITION; YAKIMA
Klickitat Farm Association;
BUILDING INDUSTRY ASSOCIATION
OF WASHINGTON; and NATIONAL
FEDERATION OF INDEPENDENT
BUSINESS, INC.,

PLAINTIFFS,

v.

STATE OF WASHINGTON;
DEPARTMENT OF REVENUE OF THE
STATE OF WASHINGTON; and JOHN
RYSER, as Acting Director of the
Department of Revenue of the State of
Washington,

DEFENDANTS.

Case No. 26-2-00073-20

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiffs, by and through their attorneys, allege the following First Amended
Complaint for Declaratory Relief (“Amended Complaint”) against Defendants the State of
Washington, Department of Revenue of the State of Washington, and John Ryser, as Acting
Director of the Department of Revenue of the State of Washington:

I. NATURE OF ACTION

1. Democratic constitutions delineate the structure of government and protect individual liberty. They prescribe and constrain the ways in which governments can act to the benefit of the citizenry. When these limits are transgressed, liberty suffers. Indeed, a branch of government that arrogates to itself power that a constitution has not conferred—even when based on perceptions of what, “in one instance, may be the instrument of good”—“is the customary weapon by which free governments are destroyed.” Farewell Address (1796), in 35 *The Writings of George Washington* 229 (J. Fitzpatrick ed. 1940). This case is about what happens when the political branches openly defy the limits of their founding document as interpreted, for nearly a century, by their independent and coordinate branch of government.

2. The Washington Constitution limits the legislature’s power in matters of taxation in three critical respects. First, under article VII, section 1, all taxes on property must be “uniform” within any class of property. Const. art. VII, § 1. Second, “property” is defined broadly, encompassing “everything, whether tangible or intangible, subject to ownership.” *Id.* Third, the aggregate tax burden on property cannot exceed 1% annually. Const. art. VII, § 2.

3. Nearly a century ago, the Washington Supreme Court applied those constitutional protections to strike down a graduated income tax in *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). *Culliton* held that income clearly fell within the broad definition of “property” in article VII, section 1, and thus any tax on income must be a uniform rate not exceeding 1%. In the decades since, the appellate courts have repeatedly “reaffirmed” the holding that income is “property” under the constitution, and have “consistently str[uck] down graduated net income taxes as unconstitutional, nonuniform property taxes.” *Quinn v. State*, 1 Wash.3d 453, 472-73, 526 P.3d 1, 13 (2023); *see, e.g., Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936) (striking down graduated income tax); *Power Inc. v. Huntley*, 39 Wn.2d 191, 194, 235 P.2d 173, 175 (1951) (“It is no longer subject to question in this court that income is property.”); *Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 210, 444 P.3d 1235, 1239 (2019) (“[T]he Washington Supreme Court has unequivocally held income is property, a tax on income is a tax on property,

1 taxes on property must be uniformly levied, and a graduated income tax is not uniform.
2 Therefore, the Washington Constitution bars any graduated income tax.”).

3 4. The constitutional prohibition on a graduated income tax also reflects the will of
4 the voters. Since *Culliton* was decided in 1933, Washington voters have been asked ten times to
5 enable or approve the imposition of a statewide income tax through constitutional amendment or
6 ballot initiative. Six times, beginning in 1934, the legislature has mustered two-thirds majorities
7 in the House and Senate to send a constitutional amendment to the voters allowing the imposition
8 of graduated income taxes or income taxes that exceed the 1% constitutional maximum. Four
9 times, most recently in 2010, voters have considered initiatives that would have imposed various
10 forms of income taxes. All ten times, Washington’s voters have resoundingly voted “no”—
11 including in 2010, when 64% of voters rejected an initiative to impose a tax on “adjusted gross
12 incomes” above \$200,000 for individuals and \$400,000 for joint filers.

13 5. Unhappy with the constitution’s limits, the legislature has ignored the
14 constitutional restraints on its power to levy taxes by enacting a graduated income tax in
15 Substitute Senate Bill 6346-S (“SSB 6346-S” or “the Act”), which the Governor signed into law
16 on March 30, 2026.

17 6. The Act imposes an effective 9.9% income tax on individuals or households with
18 gross income above \$1,000,000, effective January 1, 2028. Meanwhile, the tax rate for
19 individuals and households earning less than this income threshold is 0%.

20 7. The income tax created by the Act is unconstitutional twice over: as a property tax
21 imposed at non-uniform rates in violation of article VII, section 1, and as a tax on property that
22 exceeds 1% in violation of article VII, section 2.

23 8. The Washington Constitution imposes an additional limit on the legislature’s
24 power by prohibiting bills that “embrace more than one subject.” Const. art. II, § 19. This
25 provision serves two purposes: First, to prevent deception of legislators and the public by
26 ensuring that new legislation discloses its effects and its impact on existing laws; and second, to
27 prevent legislative logrolling, or the pushing through of controversial legislation by attaching it to
28

1 other legislation. *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207
2 (2000).

3 9. The Act violates article II, section 19 of the Washington Constitution because it
4 addresses multiple distinct and unrelated matters in a single legislative measure. In addition to
5 imposing an unlawful income tax, the Act provides for various tax expenditures and adjusts
6 certain unrelated taxes.

7 10. Plaintiffs seek a declaratory judgment that the Act is unlawful and invalid because
8 it was enacted in violation of article VII, sections 1 and 2 and article II, section 19 of the
9 constitution of the State of Washington.

10 **II. PARTIES**

11 11. Plaintiff Benjamin Petter is a home and office builder. He is married to Plaintiff
12 Lauren Petter, and they reside in Chelan County, Washington, with their three children. Mr.
13 Petter owns and operates businesses in the commercial and residential construction industry, and
14 Mrs. Petter owns and operates a marketing business. Mr. and Mrs. Petter file their taxes jointly,
15 and together, they have earned over \$1,000,000 that would qualify as “Washington taxable
16 income” under the Act in previous years, and they will earn above that amount after the Act
17 becomes effective. As a result, Mr. and Mrs. Petter will be injured in their persons by the Act’s
18 unconstitutional tax on their personal income.

19 12. Plaintiff Robert Mercer is a farmer. He is married to Plaintiff Brenda Mercer, and
20 they reside in Wyoming and own a home and farm that is located partly in both Klickitat County
21 and Benton County, Washington, along the Columbia River. His farm grows a variety of produce,
22 including carrots, onions, corn seed, wheat, wine grapes, and almonds. Mr. Mercer reports the net
23 income from his farm’s sales as personal income on his federal income tax return. Mr. and Mrs.
24 Mercer file their taxes jointly, and together, they have earned over \$1,000,000 that would qualify
25 as “Washington taxable income” under the Act in previous years, and they will earn above that
26 amount after the Act becomes effective. As a result, Mr. and Mrs. Mercer will be injured in their
27 persons by the Act’s unconstitutional tax on their personal income.
28

1 13. Plaintiff Curt Nuccitelli is a trucker. He owns and operates a trucking company.
2 Mr. Nuccitelli and Plaintiff Beatrice Gasper are married and reside in Kent, Washington. Mr.
3 Nuccitelli and Ms. Gasper file their taxes jointly, and together, they have earned over \$1,000,000
4 that would qualify as “Washington taxable income” under the Act in previous years, and they will
5 earn above that amount after the Act becomes effective. As a result, Mr. Nuccitelli and Ms.
6 Gasper will be injured in their persons by the Act’s unconstitutional tax on their personal income.

7 14. Plaintiff Ethnic Chamber of Commerce Coalition is a nonprofit association formed
8 in 2016 by seven ethnic chambers of commerce in the Greater Seattle area to provide a unified
9 voice and increase cooperation on issues affecting small business owners in their communities.
10 The ECCC is headquartered in Seattle, Washington, and represents the interests of an estimated
11 39,000 small businesses in the area. Among those interests are tax and regulatory stability.
12 Higher regulatory burdens and increased taxes directly and negatively affect ECCC members.
13 The Act’s tax will make it harder and more expensive for small businesses to operate in
14 Washington. Small businesses operate on thin margins and often experience volatile income,
15 alternating years with strong earnings against lean years with losses. The Act’s imposition of a
16 9.9% tax in the good years when Washington taxable income exceeds \$1,000,000 will erode
17 reserves and deprive businesses of investment capital they need to sustain lean years, make
18 critical capital investments, and retain and hire employees for future growth. The ECCC lobbied
19 and testified against the Act on behalf of its members, many of whom meet the requirements
20 under the Act to be subject to the tax.

21 15. Plaintiff Yakima Klickitat Farm Association (“YKFA”) is a nonprofit association
22 that represents its members and the local farming community in Yakima and Klickitat Counties.
23 YKFA is headquartered in Wapato, Washington. YKFA’s mission is to protect and support its
24 members’ right to farm and ranch. That includes protecting those rights from threats of legislative
25 and regulatory overreach in the state. The Act’s tax will make it harder and more expensive for
26 small businesses to operate in Washington. Small businesses operate on thin margins and often
27 experience volatile income, alternating years with strong earnings against lean years with losses.
28 The Act’s imposition of a 9.9% tax in the good years when Washington taxable income exceeds

1 \$1,000,000 will erode reserves and deprive businesses of investment capital they need to sustain
2 lean years, make critical capital investments, and retain and hire employees for future growth.
3 YKFA opposed and testified against the Act on behalf of its members, many of whom meet the
4 requirements under the Act to be subject to the tax.

5 16. Plaintiff Building Industry Association of Washington (“BIAW”) is a nonprofit
6 trade association that represents the housing and home-building industry in Washington. BIAW is
7 headquartered in Tumwater, Washington, and has approximately 8,300 members. BIAW is made
8 up of fourteen affiliated local associations: the Central Washington Home Builders Association,
9 the Building Industry Association of Clark County, the Jefferson County Home Builders
10 Association, the Master Builders Association of King and Snohomish Counties, the Kitsap
11 Building Association, the Lower Columbia Contractors Association, the North Peninsula Builders
12 Association, the Olympia Master Builders, the Master Builders Association of Pierce County, the
13 San Juan Building Association, the Skagit-Island Counties Builders Association, the Spokane
14 Home Builders Association, the Home Builders Association of Tri-Cities, and the Building
15 Industry Association of Whatcom County. BIAW is one of the largest home-building associations
16 in America, championing the rights of its members and fighting for affordable home ownership at
17 all levels of government. The Act’s tax will make it harder and more expensive for small
18 businesses to operate in Washington. Small businesses operate on thin margins and often
19 experience volatile income, alternating years with strong earnings against lean years with losses.
20 The Act’s imposition of a 9.9% tax in the good years when Washington taxable income exceeds
21 \$1,000,000 will erode reserves and deprive businesses of investment capital they need to sustain
22 lean years, make critical capital investments, and retain and hire employees for future growth.
23 BIAW lobbied and testified against the Act on behalf of its members, many of whom meet the
24 requirements under the Act to be subject to the tax.

25 17. Plaintiff National Federation of Independent Business, Inc. (“NFIB”) is the
26 nation’s leading small business association. NFIB is headquartered in Nashville, Tennessee, and
27 its Washington office is located in Olympia, Washington. NFIB’s mission is to promote and
28 protect the right of its members to own, operate, and grow their businesses across the country. Its

1 membership spans the spectrum of business operations, ranging from sole proprietor enterprises
2 to firms with hundreds of employees. NFIB's membership includes nearly 300,000 small and
3 independent businesses nationwide, and over 6,000 small businesses in Washington. The Act's
4 tax will make it harder and more expensive for small businesses to operate in Washington. Small
5 businesses operate on thin margins and often experience volatile income, alternating years with
6 strong earnings against lean years with losses. The Act's imposition of a 9.9% tax in the good
7 years when Washington taxable income exceeds \$1,000,000 will erode reserves and deprive
8 businesses of investment capital they need to sustain lean years, make critical capital investments,
9 and retain and hire employees for future growth. NFIB opposed and testified against the Act on
10 behalf of its members, many of whom meet the requirements under the Act to be subject to the
11 tax.

12 18. Each of the Plaintiffs has an interest in invalidating the Act's income tax and
13 preserving substantial reliance interests in Washington's longstanding prohibition on graduated
14 personal income taxes.

15 19. Defendant is the State of Washington.

16 20. Defendant Department of Revenue of the State of Washington ("DOR") is an
17 agency of the State of Washington. DOR exercises general supervision and control over the state
18 system of taxation throughout Washington.

19 21. Defendant John Ryser is the Acting Director of the DOR. He is charged with the
20 administration and enforcement of taxes at issue in this Amended Complaint and is sued in his
21 official capacity only. Mr. Ryser has served as the Acting Director of the DOR since 2025.

22 **III. STANDING**

23 22. Plaintiffs Benjamin and Lauren Petter, Robert and Brenda Mercer, Curt Nuccitelli,
24 and Beatrice Gasper have standing to challenge the constitutionality of the Act because they are
25 taxpayers who reside in Washington or otherwise earn income in Washington, and who have
26 earned over \$1,000,000 in "Washington taxable income" in recent years and will do so in 2028
27 and subsequent years. Plaintiffs suffer immediate, concrete, and specific economic injury as a
28 result of this Act and will continue to suffer when the Act becomes effective on January 1, 2028.

1 Each of the Plaintiffs has an interest in invalidating the Act's tax as an illegal property tax and
2 preserving Washington's longstanding prohibition on non-uniform, state income taxes exceeding
3 the constitution's 1% limitation.

4 23. ECCC has associational standing to challenge the Act's constitutionality. ECCC
5 members include individuals who pay taxes in this State, and who suffer immediate, concrete,
6 and specific economic injury as a result of this Act and will continue to suffer when the Act
7 becomes effective on January 1, 2028. ECCC has a direct interest in protecting its members from
8 unconstitutional taxes. In support of its mission, ECCC engages in dialogue with lawmakers and
9 policymakers concerning legislation that affects ethnic businesses and business owners, including
10 reducing barriers for its members doing business in the State. Neither the claims asserted nor the
11 relief requested requires the participation of individual ECCC members in this lawsuit.

12 24. YKFA has associational standing to challenge the Act's constitutionality. YKFA
13 members include individuals who pay taxes in this State, and who suffer immediate, concrete,
14 and specific economic injury as a result of this Act and will continue to suffer when the Act
15 becomes effective on January 1, 2028. YKFA has a direct interest in protecting its members from
16 unconstitutional taxes. In support of its mission, YKFA engages in dialogue with lawmakers and
17 policymakers concerning legislation that affects its members, including reducing barriers for its
18 members doing business in the State. Neither the claims asserted nor the relief requested requires
19 the participation of individual YKFA members in this lawsuit.

20 25. BIAW has associational standing to challenge the Act's constitutionality. BIAW
21 members include individuals who pay taxes in this State, and who suffer immediate, concrete,
22 and specific economic injury as a result of this Act and will continue to suffer when the Act
23 becomes effective on January 1, 2028. BIAW has a direct interest in protecting its members from
24 unconstitutional taxes. In support of its mission, BIAW regularly advocates in support of
25 legislation and policies that promote the supply of attainable market-rate housing and allow for
26 the development of professionals in residential construction trades. Neither the claims asserted
27 nor the relief requested requires the participation of individual BIAW members in this lawsuit.
28

1 26. NFIB has associational standing to challenge the Act's constitutionality. NFIB
2 members include individuals who pay taxes in this State, and who suffer immediate, concrete,
3 and specific economic injury as a result of this Act and will continue to suffer when the Act
4 becomes effective on January 1, 2028. NFIB has a direct interest in protecting its members from
5 unconstitutional taxes. In support of its mission, NFIB engages in dialogue with lawmakers and
6 policymakers concerning legislation that affects its members, including reducing barriers for its
7 members doing business in the State. Neither the claims asserted nor the relief requested requires
8 the participation of individual NFIB members in this lawsuit.

9 27. Plaintiffs ECCC, YKFA, and BIAW also have personal standing to challenge the
10 Act's constitutionality. As a direct result of the Act, these associations include members who are
11 contemplating leaving Washington and taking their companies and business projects with them.
12 Because either residing or doing business in Washington is a prerequisite for membership in these
13 associations, the Act will cause them to have fewer members. That means fewer membership
14 dues and a corresponding reduced ability to advance the associations' mission and interests in the
15 state. Accordingly, Plaintiffs ECCC, YKFA, and BIAW will suffer immediate, concrete, and
16 specific economic injury as a result of this Act and will continue to suffer when the Act becomes
17 effective on January 1, 2028.

18 28. This Court may also hear this action because it involves a controversy (1) of
19 substantial public importance concerning the authority of the State to levy taxes on the personal
20 income of individuals within its jurisdiction; (2) that immediately affects significant segments of
21 the population, including income earners and business owners who live in the State and must
22 begin immediately to plan for and take steps to address the personal and financial impacts of a
23 9.9% tax on their income, including for many decisions on whether to reside in Washington after
24 January 1, 2028; and (3) that has a direct bearing on commerce, finance, labor, industry, or
25 agriculture, because a personal income tax directly or indirectly affects each of these areas of the
26 economy.

1 **IV. JURISDICTION AND VENUE**

2 29. This Court has jurisdiction over this matter. Washington superior courts have
3 original jurisdiction in all cases at law that involve “the legality of any tax,” RCW 2.08.010, and
4 “have power to declare rights, status and other legal relations whether or not further relief is or
5 could be claimed,” RCW 7.24.010. This Court has jurisdiction and authority to grant Plaintiffs’
6 request to find the tax created by the Act unconstitutional and to declare the Act null and void.

7 30. Venue is proper in Klickitat County Superior Court. Persons or corporations
8 “having any claim against the state of Washington” may file their actions in the superior court
9 located in “the county of the residence or principal place of business of one or more of the
10 plaintiffs.” RCW 4.92.010.

11 **V. ALLEGATIONS OF FACTS**

12 ***Washington’s Constitution, as Interpreted by Nearly a Century of Supreme Court Precedent,***
13 ***Forbids the Imposition of a Graduated Income Tax***

14 31. Three features of Washington’s Constitution limit the legislature’s taxation powers
15 and render the tax imposed by the Act illegal. First, article VII, section 1 (Amendment 14)—
16 approved by voters nearly a century ago, in 1930—requires that “all taxes shall be uniform upon
17 the same class of property.” Second, article VII, section 1 defines “property” in the broadest
18 possible terms: to “mean and include everything, whether tangible or intangible, subject to
19 ownership.” Third, article VII, section 2 establishes the upper limit upon ad valorem property
20 taxes, essentially limiting any property tax to no more than 1% annually of the value of the
21 property.

22 32. Applying the plain meaning of the constitution’s broad definition of property, the
23 Supreme Court has held for nearly a century that income is property. In 1932, Washington’s
24 voters passed an initiative instituting the payment of a graduated income tax. The Supreme Court
25 struck down the initiative as unconstitutional in *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81
26 (1933). That same decade, the Court ruled that similar efforts by the legislature to impose income
27 taxes were unconstitutional. *See Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936)
28

1 (striking down personal net income tax); *Petrol. Navigation Co. v. Henneford*, 185 Wash. 495,
2 495-96, 55 P.2d 1056 (1936) (striking down corporate net income tax).

3 33. In subsequent decades, the appellate courts have consistently reaffirmed the rule
4 that income is property and thus subject to the constitutional requirement of uniformity and the
5 1% rate limit. *See, e.g., Power Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951) (“It is no
6 longer subject to question in this court that income is property.”); *Kunath v. City of Seattle*, 10
7 Wn. App. 2d 205, 210, 444 P.3d 1235, 1239 (2019) (striking down graduated income tax
8 imposed by City of Seattle). The Supreme Court has made clear that it is “unwilling ... to recede
9 from the position announced in its repeated decisions,” which is based on a plain reading of
10 “property” as defined in the constitution. *Apartment Operators Ass’n of Seattle, Inc. v.*
11 *Schumacher*, 56 Wn.2d 46, 47-48, 351 P.2d 124, 125 (1960).

12 34. The Act’s graduated income tax is blatantly unconstitutional under longstanding
13 Washington precedent—both because it is a non-uniform tax imposed in violation of article VII,
14 section 1, and because it far exceeds the maximum annual tax rate of 1% set forth in article VII,
15 section 2.

16 ***Washington Voters Have Overwhelmingly Rejected an Income Tax Ten Times***

17 35. The unconstitutional tax that the Act imposes also defies the will of the voters.
18 Since 1934, Washington voters have overwhelmingly rejected ten opportunities to enable or
19 impose a statewide income tax—six constitutional amendments, and four ballot initiatives.

20 36. In 1934, the year after *Culliton* was decided, the legislature mustered two-thirds
21 majorities in the House and Senate to send to the voters a constitutional amendment to delete
22 article VII’s broad definition of “property,” and allow for the imposition of a graduated income
23 tax. Voters rejected the proposed amendment 57% to 43%, retaining article VII’s expansive
24 definition of “property” and refusing to grant the legislature the power to tax income at a
25 graduated rate or at a rate higher than 1%. The voters subsequently rejected five more
26 constitutional amendments that would have given the legislature such power, the last time by
27 77%-23%. Each time, voters have confirmed their strong preference for the constitutional
28 prohibition on graduated income taxes and property taxes that exceed 1%.

1 37. The most recent ballot initiative, Initiative 1098, would have imposed a tax on
2 “adjusted gross incomes” above \$200,000 for individuals and \$400,000 for joint filers. The voters
3 resoundingly rejected that initiative by a margin of 64% to 36%.

4 38. Every other initiative and constitutional amendment on this subject has been
5 rejected by similar margins.

6 39. The citizens of Washington have consistently recognized the substantial economic
7 benefits of living in a state that does not tax individual income, and have, without fail, voted
8 against each and every attempt to change this fundamental feature of Washington’s tax structure.
9 ***Tax Advocates Use Legislature to End-Run Popular Opposition and a Century of Precedent***

10 40. Unable to convince their fellow voters over many decades, income tax advocates
11 again began lobbying the legislature and governor for a statewide income tax. This time around,
12 however, the legislature did so without proposing a constitutional amendment, as six prior
13 legislatures had done. Instead, the legislature schemed to evade democratic processes to amend
14 the constitution by inviting litigation in which the State intends to petition the Supreme Court to
15 overturn a century of unwavering precedent.

16 41. Legislators drafted a plainly unconstitutional progressive income tax proposal with
17 the explicit goal of overturning *Culliton* and its progeny—as revealed by recently disclosed
18 emails between legislative leaders, legislative counsel, and the Attorney General’s Office. *See*
19 *KIRO NewsRadio MyNorthwest Politics, Public records show Washington’s millionaires’ tax*
20 *crafted to overturn 1933 income tax ruling* (Apr. 20, 2026),
21 <https://mynorthwest.com/mynorthwest-politics/millionaires-tax-2/4230186>; TJ Martinell, *The*
22 *Center Square, Records reveal WA millionaire’s tax is meant to legalize progressive income tax*
23 *(Apr. 20, 2026)*, [https://www.thecentersquare.com/washington/article_784a7dcd-4aee-4514-](https://www.thecentersquare.com/washington/article_784a7dcd-4aee-4514-97e0-ff8643eeced2.html)
24 [97e0-ff8643eeced2.html](https://www.thecentersquare.com/washington/article_784a7dcd-4aee-4514-97e0-ff8643eeced2.html).

25 42. For example, before the 2026 legislative session began, the bill’s primary sponsor
26 emailed the Attorney General’s Office with a draft of the Act, requesting “thoughts and
27 comments about what will give us the best shot to have *Culliton* overruled.”
28

1 43. Similarly, the bill’s sponsor told legislative counsel that the goal of the Act is “to
2 force the Washington Supreme Court to reconsider its caselaw that considers income to be
3 property.”

4 44. Likewise, in internal emails commenting on the draft bill, the Attorney General’s
5 Office described the primary “overall legislative goal[]” as “hav[ing] our Supreme Court overturn
6 *Culliton v. Chase*.”

7 45. With the goal of overturning *Culliton* and its progeny in mind, legislative leaders
8 unveiled their hotly anticipated proposal ahead of the 60-day legislative session. The draft
9 legislation imposed a 9.9% tax on income in excess of \$1,000,000. Legislative leaders pushed
10 forward with the proposal, despite acknowledging its unconstitutional character given the near-
11 century-old Supreme Court precedent.

12 46. Mindful of the uniform public opposition over the last 90 years to any income tax,
13 the bill’s drafters added a “necessity clause” to its final page. Generally, citizens in Washington
14 can file a referendum to ask voters to overturn a recently passed law, “except such laws as may
15 be necessary for ...the support of the state government and its existing public institutions.” Const.
16 art. II, § 1(b). Fully aware of the history of popular opposition to income taxes, the legislature
17 acted deliberately to frustrate any such voter rejection. The legislature declared the Act to be
18 “necessary for the support of state government and its existing public institutions,” SSB 6346-S
19 § 1208, even though it does not become effective until January 1, 2028, and the tax will not be
20 collected until April 2029, in a future biennium for which no budget has been or can be set in this
21 legislature. By including a declaration of necessity in the Act, the legislature deliberately
22 prevented voters from mounting a referendum challenge to this unconstitutional income tax.

23 47. The Washington legislature passed the bill on March 11, 2026. Lawmakers on
24 both sides of the aisle recognized the bill as a “seismic shift” in the Washington tax code—one
25 that directly violates the constitution’s plain language and binding Supreme Court precedent—
26 and thus would inevitably be challenged in the courts.

27 48. The Governor signed the Act into law on March 30, 2026.
28

1 ***Key Provisions of the Act***

2 49. The title of the Act is:

3 AN ACT Relating to investing in Washington families and businesses to fund K-12
4 education, health care, higher education, other essential governmental services, and the
5 working families' tax credit, and to reduce certain sales and use taxes and certain business
6 and occupation taxes by establishing a tax on millionaires; amending RCW 82.32.050,
7 82.32.060, 82.32.090, 2.10.180, 2.12.090, 2.14.100, 6.15.020, 41.24.240, 41.32.052,
8 41.34.080, 41.35.100, 41.37.090, 41.40.052, 41.44.240, 41.26.053, 41.28.200, 43.43.310,
9 82.08.0206, 82.04.4451, 82.32.045, 82.04.288, 82.04.050, 82.04.192, 82.04.050,
10 82.04.288, and 1.90.100; amending 2023 c 456 s 3 (uncodified); adding a new section to
11 chapter 74.20A RCW; adding new sections to chapter 82.08 RCW; adding new sections
12 to chapter 82.12 RCW; adding a new Title to the Revised Code of Washington to be
13 codified as Title 82A RCW; creating new sections; prescribing penalties; and providing
14 effective dates.

15 50. At its core, the Act imposes a tax on personal income at non-uniform rates: 0% on
16 income at or below \$1,000,000, and 9.9% on income in excess of that amount. More specifically,
17 the Act taxes the "Washington taxable income," i.e., income in excess of \$1,000,000, of every
18 "taxpayer" at 9.9%. SSB 6346-S §§ 201, 314.

19 51. Married taxpayers are penalized by sharing a \$1,000,000 threshold, regardless of
20 whether they file jointly or separately. *Id.* § 314.

21 52. Any taxpayer with a total income at or below \$1,000,000 is taxed at 0%. The
22 \$1,000,000 threshold adjusts every other year for inflation based on certain measures of the
23 Consumer Price Index. *Id.* § 316.

24 53. The Act provides a multi-section definition of a taxpayer's "Washington taxable
25 income." To start, the law takes the taxpayer's federal adjusted gross income from their federal
26 return. *Id.* § 301. That number is then modified by §§ 302-308 and 401-407, after which it
27 becomes the taxpayer's "Washington base income." *Id.* § 101(11). Those modifications pertain
28 to, among other things, long-term capital gains and losses and federal, state, and local obligations.

1 The Act then provides deductions and adjustments in §§ 309-314, which include but are not
2 limited to charitable contributions, pass through entity tax payments, and a “one million dollar
3 standard deduction.” The result is the taxpayer’s “Washington taxable income.” *Id.*

4 54. The Act defines “taxpayer” as Washington residents and nonresident individuals
5 earning income from “sources within the state.” *Id.* § 401.

6 55. Individuals subject to the 9.9% tax rate must file a tax return with Washington’s
7 Department of Revenue by the date on which their federal income tax returns are due. *Id.*
8 § 702(1)(a). Individuals not subject to the tax are not required to file a return. *Id.* Failure to file a
9 tax return triggers a penalty of at least 5% but no more than 25% of the unpaid tax due. *Id.*
10 § 702(5)(a).

11 56. Any individual who knowingly attempts to evade the tax is guilty of a class C
12 felony, which is punishable by a fine not to exceed \$10,000, or by imprisonment for not more
13 than five years, or both. *Id.* § 601(1). Any individual who knowingly fails to pay the tax, make
14 returns, or supply information is guilty of a gross misdemeanor, which is punishable by a fine not
15 to exceed \$5,000, or by imprisonment of less than a year, or both. *Id.* § 601(2).

16 57. The Act also addresses various other, unrelated taxes. For example, the Act
17 amends the existing working families’ tax credit (RCW 82.08.0206), SSB 6346-S §§ 901-902;
18 exempts grooming and hygiene products, diapers, and over-the-counter drugs from sales and use
19 tax, *id.* §§ 903-908; and adjusts the business and occupation tax, *id.* §§ 909-911. In addition, the
20 Act amends the definition of “sale at retail” and “retail sale.” *Id.* §§ 1001-1002.

21 58. The Act provides that revenue collected under the new income tax will be
22 deposited into the state general fund to fund the various tax changes outlined above and “to make
23 public investments in K-12 education, health care, human services, and higher education.” *Id.*
24 § 202(1). Beginning on July 1, 2029, 5% of that revenue will be deposited into the fair start for
25 kids account. *Id.* § 202(2).

26 59. The Act includes a “Null and Void” provision. *Id.* § 1202. Pursuant to that
27 provision, “sections 1 through 1003 and 1201 through 1209” will be deemed “null and void” if a
28 court “invalidates” the income tax. *Id.*

1 60. The Act becomes effective on January 1, 2028. In other words, the new tax will be
2 paid in 2029 based on 2028 income. *Id.* § 201.

3 ***The Current Favorable Tax Environment Promotes Opportunity for All in Washington***

4 61. Washington has long attracted entrepreneurs and business owners to the state,
5 becoming a major hub for technology and aerospace, among other industries.

6 62. The absence of an income tax has long been a key selling point for those
7 businesses and entrepreneurs. The Department of Commerce has touted this very fact as a
8 significant competitive advantage in its promotional materials to attract businesses and citizens,
9 referring to Washington as a “business friendly state” precisely because it “does not have a
10 personal or corporate income tax.” *Washington State: A smart investment*, Wash. State Dep’t of
11 Commerce, <http://choosewashingtonstate.com/selectusa/> (last visited Mar. 26, 2026).

12 63. The resulting robust economic environment has created opportunities for all
13 citizens in Washington. It is no accident that the founders and leaders of a disproportionate share
14 of the world’s greatest companies—such as Boeing, Nordstrom, Microsoft, Costco, Starbucks,
15 and Amazon, just to name several of the dozens that are headquartered in Washington—have
16 been founded in or relocated to a state that, until now, has been free of personal income taxes.
17 The presence of so many thriving industries and businesses in this region has been a critical
18 factor in Washington’s robust economic growth over the last several decades. Its per-capita GDP
19 ranks among the top three states in America, and per-capita personal income in the top ten. These
20 businesses and their well-paid employees have made immense direct financial contributions to
21 state and local government, through property taxes, Business and Occupation taxes, business
22 licenses and fees, sales taxes, and numerous other fees and taxes. Washington’s tremendous
23 economic success demonstrates that the absence of a state income tax has led to broadly shared
24 financial benefits for residents of the State.

25 64. These thriving companies have continued to grow and prosper in large part
26 because they have been able to attract the most skilled talent from other states and even other
27 countries, in no small part because of Washington’s favorable tax structure. Here again,
28

1 Washington has enjoyed a significant competitive advantage over other states because it is free of
2 state income taxes.

3 65. The imposition of this new, unlawful income tax seriously threatens Washington's
4 status as an economic powerhouse and as a state that attracts businesses. Some talented
5 entrepreneurs, founders, and other individuals who would have relocated to Washington to start
6 or grow companies or to work for local employers and boost the local economy will excuse
7 themselves from exposure to the annual 9.9% tax on incomes above the threshold—the fifth-
8 highest top marginal income tax rate in the nation. Worse still, Washington's new tax regime will
9 likely cause outward migration of high-earning households, business owners, and investors—
10 leading to job losses and reduced tax revenue. Underscoring the point, the Association of
11 Washington Business recently released a quarterly survey which found that 44% of business
12 leaders are now considering moving their personal residence out of the state, a figure that has
13 doubled since the income tax was first proposed. Ass'n of Wash. Bus., *Survey Shows More WA*
14 *Businesses Looking to Leave* (Feb. 5, 2026), [https://www.awb.org/survey-shows-more-wa-](https://www.awb.org/survey-shows-more-wa-businesses-looking-to-leave/)
15 [businesses-looking-to-leave/](https://www.awb.org/survey-shows-more-wa-businesses-looking-to-leave/).

16 VI. CAUSES OF ACTION

17 FIRST CAUSE OF ACTION 18 DECLARATORY JUDGMENT THAT THE ACT VIOLATES ARTICLE VII, 19 SECTION 1 OF THE WASHINGTON CONSTITUTION

20 66. Plaintiffs rely on the allegations of Paragraphs 1 through 65.

21 67. There is an actual, present, and justiciable controversy as to whether the Act
22 violates article VII, section 1 of the Washington Constitution because it imposes a non-uniform
23 tax on property.

24 68. The Act imposes a tax on personal income at non-uniform rates: 0% on income at
25 or below \$1,000,000, and 9.9% on income in excess of that amount. Because longstanding
26 precedent of the Washington Supreme Court unequivocally holds that income is property within
27 the meaning of the Washington Constitution, the Act is a tax on property. *See, e.g., Culliton v.*
28 *Chase*, 174 Wash. 363, 25 P.2d 81 (1933); *Power Inc. v. Huntley*, 39 Wn.2d 191, 194, 235 P.2d

1 173, 175 (1951). The Act therefore violates article VII, section 1 of the Washington Constitution
2 because taxes on property must be uniformly levied and the Act imposes a non-uniform tax
3 ranging from 0% to 9.9% within the same class of property.

4 69. A judicial determination on the illegality, invalidity, and unenforceability of the
5 Act will conclusively resolve these issues of substantial public concern and the parties' dispute.

6 70. Plaintiffs are entitled under RCW 7.24.020 to a declaration that the Act is invalid
7 because it violates article VII, section 1 of the Washington Constitution.

8 71. Plaintiffs reserve the right to raise any and all legal bases under Washington law to
9 challenge the constitutionality, legality, validity or enforceability of the Act.

10 **SECOND CAUSE OF ACTION**
11 **DECLARATORY JUDGMENT THAT THE ACT VIOLATES ARTICLE VII, SECTION**
12 **2 OF THE WASHINGTON CONSTITUTION**

12 72. Plaintiffs repeat and reallege Paragraphs 1 through 65 as if fully set forth here.

13 73. There is an actual, present, and justiciable controversy as to whether the Act
14 violates article VII, section 2 of the Washington Constitution because it exceeds the 1% limit on
15 taxes upon personal property.

16 74. Under longstanding precedent of the Washington Supreme Court, income is
17 property within the meaning of the Washington Constitution. *See, e.g., Culliton v. Chase*, 174
18 Wash. 363, 25 P.2d 81 (1933); *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936). And
19 because the Act imposes a tax of 9.9% on income in excess of \$1,000,000, it violates the 1% limit
20 in article VII, section 2.

21 75. A judicial determination on the illegality, invalidity, and unenforceability of the
22 Act will conclusively resolve these issues of substantial public concern and the parties' dispute.

23 76. Plaintiffs are entitled under RCW 7.24.020 to a declaration that the Act is invalid
24 because it violates article VII, section 2 of the Washington Constitution.

25 77. Plaintiffs reserve the right to raise any and all legal bases under Washington law to
26 challenge the constitutionality, legality, validity or enforceability of the Act.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT THAT THE ACT VIOLATES ARTICLE II, SECTION 19
OF THE WASHINGTON CONSTITUTION

78. Plaintiffs repeat and reallege Paragraphs 1 through 65 as if fully set forth here.

79. There is an actual, present, and justiciable controversy as to whether the Act violates article II, section 19 of the Washington Constitution because it embraces more than one subject.

80. Article II, section 19 of the Washington Constitution states, “No bill shall embrace more than one subject, and that shall be expressed in the title.” Because the Act addresses multiple distinct and unrelated matters in a single measure, as the title and substance of the measure fully disclose, the Act violates article II, section 19 of the Washington Constitution.

81. A judicial determination on the illegality, invalidity, and unenforceability of the Act will conclusively resolve these issues of substantial public concern and the parties’ dispute.

82. Plaintiffs are entitled under RCW 7.24.020 to a declaration that the Act is invalid because it violates article II, section 19 of the Washington Constitution.

83. Plaintiffs reserve the right to raise any and all legal bases under Washington law to challenge the constitutionality, legality, validity or enforceability of the Act.

VII. PRAYER FOR RELIEF

1. **Declaratory Relief.** For a declaratory judgment that the Act is illegal, invalid, and unenforceable in its entirety.

2. **Attorneys’ Fees and Cost of Suit.** For attorneys’ fees, costs, and expenses of bringing this suit, to the extent permitted by law or equity.

3. **Other Relief.** For such other and further relief as the Court deems just, proper, and equitable.

DATED this 27th day of April 2026.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: s/Robert M. McKenna

Robert M. McKenna (WSBA# 18327)
Daniel J. Dunne, Jr. (WSBA# 16999)
401 Union Street, Suite 3300
Seattle, WA 98101
Telephone (206) 839-4300
Fax (206) 839-4301
rmckenna@orrick.com
ddunne@orrick.com

Cesar Lopez-Morales (*pro hac vice*)
2100 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone (202) 339-8400
Fax (202) 339-8500
clopez-morales@orrick.com

Attorneys for Plaintiffs

CITIZEN ACTION DEFENSE FUND

By: s/Jackson Maynard

Jackson Maynard (WSBA# 43481)
111 21st Ave SW
Olympia, WA 98501
Telephone (850) 519-3495
jackson@citizenactiondefense.org

Attorney for Plaintiffs Benjamin Petter and Lauren Petter

TALMADGE FITZPATRICK PLLC

By: s/Philip Talmadge

Philip Talmadge (WSBA# 6973)
2775 Harbor Avenue Southwest, 3rd Floor, Suite C
Seattle, WA 98126
Telephone (206) 574-6661
phil@tal-fitzlaw.com

*Attorney for Plaintiff Ethnic Chamber of Commerce
Coalition*